PUBLIC PROSECUTOR

v.

RAMLI MOHD. AKHIR

HIGH COURT MALAYA, SEREMBAN
PEH SWEE CHIN J
[CRIMINAL REVISION NO. 4 OF 1983]
21 APRIL 1983

ROAD TRAFFIC: *Application for revision - Order of disqualification dispensed with - No special reasons recorded - Whether Magistrate should record.*

The accused was convicted and fined RM700, at the Magistrate's Court, Jelebu for an offence under s. 34A(1) of the Road Traffic Ordinance 1958. The learned Magistrate did not expressly make an order of disqualification nor did he record any special reasons for the same. The Public Prosecutor applied for revision of the decision of the Magistrate contending that the learned Magistrate should have recorded the special reasons for not making the order of disqualification. Meanwhile the learned Magistrate explained that it was not incumbent for him to do so.

Held:
The Magistrate was not wrong, as s. 34A(1B) did not expressly require the special reasons to be recorded. Therefore conviction and fine confirmed without any order of disqualification for driving or obtaining a driving licence.

[Conviction confirmed Fine of RM700 imposed with out any order of disqualification for driving.]

Case referred to:
Chan Tak Sang v. PP [1956] MLJ 256

Legislation referred to:
Road Traffic Ordinance 1958, ss. 34A(1B), 74(2)

For the appellant - Balia Yusof bin Wahi, DPP
For the respondent - in Person

JUDGMENT

Peh Swee Chin J:

The accused in this case was convicted for an offence under s. 34A(1) of the Road Traffic Ordinance 1958 at the Magistrate's Court, Jelebu and was fined RM700. The learned Magistrate decided not to, and did not expressly make an order of disqualification from holding or obtaining a driving licence which he would have power to make under the said s. 34A(1B) which provides -

> (1B) A person convicted under this section shall, unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order longer period of disqualification, be disqualified for a period of not less than twelve months from the date of the conviction for holding or obtaining a driving licence.

There is no mention anywhere in the records of this case about any special reasons for the non-making of such an order of disqualification.

The learned Deputy Public Prosecutor has applied to me for revision, being of the view to the effect, that the learned Magistrate should have recorded the special reasons for not making the order of disqualification. The learned Magistrate has written to Court, offering an explanation to the effect, that it was not incumbent for him to do so as the wording of the said s. 34A (1B) did not expressly require the special reasons to be recorded.

I think the learned Magistrate was right in saying so, and it is entirely possible that the learned Deputy Public Prosecutor has been misled by similar provisions in the Road Traffic Ordinance, 1958 providing for similar order of disqualification where such other provisions provide expressly for such special reasons "to be specified" or incorporated in the order, either dispensing with the making of such an order of disqualification altogether or varying the normal periods of twelve months of such an order of disqualification. Such a provision, for example, can be found in s. 74(2) of the Road Traffic Ordinance 1958. We cannot question the wisdom of the legislature in imposing such requirement in some section and not in other section of the Ordinance. The omission should be regarded as deliberate.

I would like, in this connection, to exhort all Magistrates, in all cases dealing with such similar provision for similar disqualification, that they must expressly and in writing, make an order either dispensing with such disqualification altogether OR imposing such disqualification for twelve months as for any other reduced or increased period of disqualification. The reason is that the Court of Appeal in the case of *Chan Tak Sang v. PP* [1956] MLJ 256 in regard to such order of disqualification held, to quote:

> There is no necessity for the Court to order disqualification for a period of twelve months since such disqualification is automatic.

The words quoted are wide enough to mean that if a Court is disposed to make an order of disqualification for twelve months, it need not make such an order expressly or in writing in its records for it is "automatic". If the words are taken in this way, it will create very obvious administrative problems and confusion for members of the public, Traffic Police or Registrars and Inspectors of Motor Vehicles. The *ratio* of the decision of the Court of Appeal (in which Smith J delivered the judgment of the Court), should remain what it really is, that the Court should, on a finding of guilt normally impose twelve months' disqualification, unless for special reasons where it can then dispense with such an order or make an order with reduced or increased period of disqualification.

On the facts of this case, the Court sees no reason for imposing disqualification for holding or obtaining a driving licence as the learned Magistrate has disclosed grounds constituting such special reasons for not ordering disqualification on the facts in this case.

I therefore confirm the conviction and fine of RM700 without any order of disqualification for driving or obtaining a driving licence.

Also found at [1983] 2 CLJ 221